BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

GLENDA HARPER	)	
Claimant	)	
VS.	)	
	)	Docket No. 248,794
STATE OF KANSAS	)	
Respondent	)	
AND	)	
	)	
STATE SELF INSURANCE FUND	)	
Insurance Carrier	)	

ORDER

Claimant appeals from the November 21, 2000 preliminary hearing Order Denying Medical Treatment entered by Administrative Law Judge Pamela J. Fuller.

ISSUES

Claimant was injured April 23, 1999 while working for respondent. This is not disputed. What is disputed is whether on or about April 24, 2000, she suffered a hernia injury while participating in an authorized work-hardening program. Judge Fuller denied claimant treatment for the hernia without any explanation. Neither party bothered to file a brief with the Board, so we are without the benefit of their arguments. But, from the Transcript of Proceedings of the November 21, 2000 Preliminary Hearing, it is apparent that respondent contends claimant's current condition and need for medical treatment is neither a direct result of the April accident at work, nor caused by the work hardening. Presumably, respondent contends the hernia to be unrelated to both her work and to the authorized medical treatment or work hardening she was receiving for her work-related injury. Claimant believes that the hernia did occur during work hardening and, therefore, should be considered a natural consequence of the original injury. Accordingly, the issue is whether claimant's current need for medical treatment is due to an accidental injury that arose out of and in the course of claimant's employment with respondent. This issue is considered jurisdictional and is subject to review by the Board on an appeal from a preliminary hearing order.[1]

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[1] K.S.A. 44-534a(a)(2) and K.S.A. 44-551(b)(1).

FINDINGS OF FACT

1. On April 23, 1999, claimant was injured in the course of performing her regular job duties for respondent. Claimant also alleges a series of accidents each day she worked thereafter.

2. Claimant was provided authorized medical treatment with orthopedic surgeon, Michael J. Baughman, M.D., who treated claimant for low back and left leg complaints.

3. After a functional capacities assessment (FCA) was conducted on March 27, 2000, claimant was placed in a work-hardening program. The program was scheduled for five days a week for four weeks. Claimant's start in work hardening was delayed until April 14, 2000 because she was hospitalized for pneumonia the day after the FCA. This may in part account for the submaximum effort recorded in the FCA report.

4. Claimant felt a rupture about 15 minutes before the end of the work hardening program, on Monday, April 24, 2000. The next day claimant reported that she could not continue with the program. The Healthsouth Rehabilitation Center's records show that just prior to this claimant was feeling better and slowly improving.[2]

5. Claimant was scheduled to see Dr. Baughman next on May 4, 2000. At that time she reported to Dr. Baughman that she felt she had a new rupture brought on by the exertion at physical therapy. Dr. Baughman examined her abdomen but was unable to detect a hernia.

6. Because claimant was not working and did not have health insurance, she did not seek medical treatment on her own. But on June 13, 2000, her attorney sent her for an independent medical examination with Dr. Pedro A. Murati. He determined that claimant had an abdominal hernia.

CONCLUSIONS OF LAW

The Workers Compensation Act places the burden of proof upon claimant to establish her right to an award of compensation and to prove the conditions on which that right depends.[3] "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue

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[2] Claimant's Exhibit 2.

[3] K.S.A. 44-501(a) *see also* Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993) and Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

is more probably true than not true on the basis of the whole record."[4] The Act is to be liberally construed to bring employers and employees within the provisions of the Act but those provisions are to be applied impartially to both.[5]

Claimant attributes her hernia to the work hardening. She denies having performed any strenuous activities at home or having sustained any subsequent injuries. Respondent presented some evidence to suggest the hernia may not have occurred as claimant described. Nevertheless, based upon the record compiled to date, the Board finds claimant's testimony believable and reverses the ALJ's decision not to award medical treatment benefits.

When the primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.[6] It is not compensable, however, where the worsening or new injury would have occurred even absent the primary injury or where it is shown to have been produced by an independent intervening cause.[7] The Board finds that the hernia was the result of the work hardening. Therefore, the hernia injury is compensable as a direct and natural consequence of the original April 23, 1999 work-related injury and not as a new accident.[8]

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.[9]

WHEREFORE, it is the finding, decision, and order of the Board that the Order Denying Medical Treatment entered by Administrative Law Judge Pamela J. Fuller on November 21, 2000, should be, and the same is hereby, reversed and remanded to the Administrative Law Judge for further proceedings and/or orders consistent with the above findings and conclusions.

IT IS SO ORDERED.

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[4] K.S.A. 44-508(g). *See also* *In re* Estate of Robinson, 236 Kan. 431, 690 P.2d 1383 (1984).

[5] K.S.A. 44-501(g).

[6] Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972).

[7] Nance v. Harvey County, 263 Kan. 542, 952 P.2d 411 (1997); Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P.2d 697 (1973). *See also* Bradford v. Boeing Military Airplanes, 22 Kan. App. 2d 868, 924 P.2d 1263, *rev. denied* 261 Kan. 1082 (1996).

[8] Frazier v. Mid-West Painting, Inc., 268 Kan. 353, 995 P.2d 855 (2000).

[9] K.S.A. 44-534a(a)(2).

Dated this ____ day of April 2001.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Richard L. Friedeman, Great Bend, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director